(1991) 02 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 215 of 1983

Geep Industrial Syndicate Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 08-02-1991

Acts Referred:

Citation : (1991) 38 ECR 178 : (1992) 58 ELT 493

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.K. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against the order of the Assistant Collector/Appropriate Authority dated 17/18-2-1983. By this order the Assistant Collector/Appropriate Authority has classified the torch switches manufactured by the petitioner assessee under Tariff Item No. 61.

2. The petitioner manufactures inter alia dry cell battery torches. It manufactures switches used in those torches. Question arose whether these switches should be classified under Tariff Item No. 61 or under Tariff Item No. 68. The duty under T.I. 61 is higher than the rate under T.I. 68. Tariff Item 61 reads as follows:-

"Electric Lighting Fittings namely :- Switches, Plugs, and Sockets, all kinds; Chokes and Starters for fluorescent Tubes."

Tariff Item 68 is, of course, residuary item and it is not in dispute before us that if the said switches, do not fall under Item 61, they would fall under Tariff Item 68.

3. In the first instance, the Assistant Collector/Appropriate Authority decided by his order dated 16-12-1982 that the said switches must be classified under Tariff Item 61. The assessee preferred an appeal to the Collector, Central Excise (Appeals). The Appellate Collector allowed the appeal and remanded the matter to the Assistant Collector/Appropriate Authority for a fresh decision on the

question of classification of the said goods after giving the petitioner a fresh and full opportunity to present its case. It would be appropriate to extract paragraphs 4 to 6 of the Appellate Order:

"4. It is observed that the questions involved in the case related to a matter of classification of torch switches. It is apparent that all matters involving classification disputes, by their very nature, involve serious issue. A decision on classification issue is, in fact, the corner-stone of administration of Central Excise Law. Besides, it has a repetitive effect on assessment and collection of Central Excise Duty. Therefore, adjudication of such a matter must in all fairness to the assessee, be done after a detailed analysis of various aspects of the matter and proper evaluation of evidence. Such decisions must invariably be arrived at through a detailed process of reasoning. Surprisingly, however, I observe that the Assistant Collector''s order does not throw any light on the evidence and the reasons which have guided him towards the conclusion he has arrived at. It is a classical example of a non-speaking order and is, therefore, bad in law and liable to be set aside.

5. The appellants have made other submissions on the merits of their case. However, as the Order of the Assistant Collector does not disclose his mental process nor does it indicate the grounds for his decision, I refrain from commenting on the merits of the issues involved in this case.

6. For the reasons discussed above, I set aside, without prejudice, the Assistant Collector''s Orders. He may, however, reconsider the matter de novo after disclosing to the appellants the grounds on which reclassification of torch switches is proposed and also after giving them a fresh and full opportunity to present their case."

4. In pursuance of the appellate order the Assistant Collector/Appropriate Authority took up the matter again. He fixed a date, namely, 17-2-1982 for oral hearing. The petitioner appeared by a counsel and stated that -

"At present it is not possible to collect and give any further evidence. Therefore, the case may be decided."

The Assistant Collector/Appropriate Authority thereupon passed the impugned order. A perusal of the order shows that the Assistant Collector/Appropriate Authority referred, in the first instance, to trade Notice No. 178 of 1981, dated 13-1-1982 but observed that he is deciding the case without being influenced by the said notice. He then referred to the meaning of the expression ''switches'' in Chambers dictionary and concluded that the switches in question do fall under Tariff Item 61. He relied upon the Trade Notice No. 178 of 1981 as supporting his conclusion.

5. The contention of the petitioner is that the impugned order of the Assistant Collector/Appropriate Authority is not in accordance with and is not in compliance with the directions given in the appellate order. It is argued that the Assistant

Collector/Appropriate Authority has failed to deal with the several contentions and material put forward by the petitioner in his representation filed on 13-12-1982 (filed as Annexure-6 to the writ petition). It is also pointed out that the Appellate Authority has specifically called upon the Assistant Collector to deal with the several contentions raised by the petitioner and to pass a speaking order after analysing the various aspects of the matter. It is complained that the impugned order is a cryptic one and is mainly influenced by Trade Notice No. 178 of 1981.

6. On the other hand, Mr. Katju, learned counsel for the Revenue, contended that the writ petition itself is misconceived and not to be entertained inasmuch as the petitioner has an alternative remedy by way of an appeal provided by statute. He says that the petitioner must be relegated to the remedy of appeal.

7. This writ petition was filed in February 1983. It was entertained and the respondents were called upon to file a counter. Initially, an order of stay was also granted on 1-3-1983 which appears to have been vacated on 6-11-1986.

8. On a perusal of the order of the Assistant Collector/Appropriate Authority, impugned herein, we are of the opinion, that it is not strictly in accordance with the appellate order aforesaid. In his representation the petitioner has referred to several aspects including some decisions besides some other material. All that has not been dealt with in the order. The function of the Assistant Collector/ Appropriate Authority in this case is a quasi-judicial one which necessarily means that he must apply his mind to the material placed before him and express his opinion thereon. It is true that the right of appeal is also available but, having regard to the directions contained in the appellate order which do not appear to have been carried out properly, the result would be the same even if we relegate the petitioner to appeal. Since the matter has been pending in this Court for about eight years it is not appropriate to throw out the writ petition on the said preliminary objection. More particularly when we are satisfied that the order of the Assistant Collector/Appropriate Authority, impugned herein, is not in accordance with the directions given in the appellate order. The impugned order of the Assistant Collector/Appropriate Authority is accordingly quashed.

9. The petitioner''s counsel says that there is no further material to be placed by him before the Authority. In such a situation the Assistant Collector/Appropriate Authority is directed to dispose of the matter within six weeks from today. He shall fix a date of hearing on which date he shall hear the petitioner or his counsel if they appear and dispose of the matter. The petitioner will be present on that date. In any event, he will not ask for adjournment.

10. A certified copy of this order shall be produced before the Assistant Collector/ Appropriate Authority by the petitioner within ten days from today.

11. The writ petition is allowed in above terms. No costs.

12. Certified copy of this order may be given to learned counsel for the parties

on payment of usual charges within five days.